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Portugal

Lisbon, Portugal, December 31, 1948

no. 470

~~CONFIDENTIAL~~ Problems of Jurisdiction in Portuguese Coastal Waters.

THE MEMORANDUM

THE SECRETARY OF STATE,

WASHINGTON.

SIR:

I have the honor to refer to Department's instruction no. 71 of November 5, 1948 directing the Embassy to explain to officials of the Portuguese Government the American theory of jurisdiction over coastal waters and to report their reaction. The Department also requested a summary of developments portending the adoption of legislation to deal with Portugal's problems in this field as well as of the essential facts regarding the sardine fishing industry.

There is attached a memorandum on the Portuguese sardine fishing industry by Second Secretary Barnes of this Embassy, written with particular emphasis on the questions raised by the Department's instruction.

Another officer of the Embassy has taken up with officials of the Ministry of Foreign Affairs and of the Ministry of Marine, in the sense of the Department's instruction under reference, the basic problems of jurisdiction and sovereignty concerned in the regulation of coastal fisheries. It is clear from their remarks that in general the Portuguese Government, after studying the recent legislative developments in this field throughout the world, shares the apprehension with which the United States Government views the unilateral extension of sovereignty over coastal portions of the high seas. The Portuguese Government is, however, very anxious to acquire by proper legal means the unquestioned right to exert reasonable police jurisdiction over a wider strip of coastal waters than the traditional three miles over which it enjoys sovereignty. As indicated in the enclosed memorandum, it applies the principle of reciprocity in regulating the right of nationals of foreign countries to fish off its shores. For example it permits Belgian fishermen to practice their trade, if they so desire, up to the three-mile limit but limits Spanish fishermen to the six-mile limit prescribed by their own government for Portuguese nationals. With less international sanction but for equally cogent reasons of conservation, the Portuguese exercise a unilateral police jurisdiction over all vessels, their own or foreign, in prohibiting the cleansing of fuel oil tanks within six miles of the coast.

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Commander Azevedo da Silva, the Director of Fisheries in the Ministry of Marine stated in the foregoing connection that Portugal had advocated in a League of Nations meeting, held in 1930 to consider the problem of territorial waters, the adoption of an international agreement to permit the respective countries to exercise necessary police measures as opposed to sovereignty within a reasonable distance of their shores. He stated that Portugal's desire for a solution is far more urgent today. Portugal's interests lie particularly in the field of conservation of fishing resources, whether by regulation of fisheries or by the prevention of pollution, but the Government here, no doubt with its undeveloped colonies in mind, is also aware of the special problem of continental shelves wherein are found mineral deposits of value.

Dr. Esteves Fernandes, Director of Economic Affairs of the Portuguese Foreign Office, and the Director of Fisheries have both indicated that the Portuguese delegation will usually find itself in agreement with the point of view of the United States Government so far as concerns the principles of the proposed Northwest Atlantic Fisheries Convention. As it appeared from remarks made by the latter official that there are some points which the Portuguese authorities would like to have clarified in order to brief their delegation more effectively, the interviewing officer volunteered to seek from the Department any further information which might be desired. The result of this offer was my airgram no. 431 of December 30 requesting the additional information which the Portuguese delegation and the officials briefing them seem to think most necessary.

Respectfully yours,

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General

The Portuguese sardine fishery and the large domestic canning industry which depends on it, constitute one of the country's most important sources of wealth. Some 20,000 fishermen are employed in the fishery which is exploited by a large number of independent fishing proprietors who supply the boats, nets, fishing tackle and other gear. Under the Portuguese corporative system the proprietors have since 1938 been associated in a guild, the object of which is to protect the industry by orienting and controlling sardine fishing operations and the trade in sardines in collaboration with the appropriate government services. In 1943 the sardine fleet numbered 412 boats and 200 auxiliary craft for the transport of fish and there were, in addition, 24 sardine traps in operation along the Portuguese coast. Sardine catches during the years 1941-1946 have averaged approximately 100,000 tons annually, with an average value of 275,000 contos (\$11,000,000). This represented an average of 47% by volume of all species of fish caught by Portuguese fishermen during the years in question and 43% by value. Approximately 60% of the sardine catch is destined for public consumption in Portugal. About 5% is put up in brine and 35% canned for exportation. Sardines are one of the most important staple foodstuffs of the Portuguese people and the exportation of the canned product constitutes one of the country's principal sources of foreign exchange.

Geographic Extent of Fishery

Sardine fishing is carried on along the entire coastline of Portugal with the most important fishing areas being within six miles of the shore. The most important fishing centers are Matosinhos and Figueira da Foz in the north; Peniche, Lisbon and Setubal in the center; and Portimao, Olhao and Vila Real de Santo Antonio in the south. In general, fishing operations are not carried on in waters greater than 100 meters in depth. In the north where the coastal waters are shallow, the 100 meter depth line runs out as far as twenty miles; in the center, particularly in the Lisbon and Setubal area where the ocean floor drops off suddenly to 1000-meter depths, this line is much closer to the shore, generally within the six-mile limit.

Foreign Participation in the Fishery

The Spanish are the only other nationality now conducting sardine fishing operations in Portuguese coastal waters. Ordinarily they confine their activities to the coastal waters adjacent to Spain. However, the Spanish sardine fleets, based at Huelva and Cadiz in the south and Vigo in the north, follow the practice of extending their operations to Portuguese coastal waters in the event that fish do not appear in sufficient quantities in Spanish coastal waters. Before the war the Belgians also fished for sardines off the Portuguese coast and rare appearances were made in these waters by British and French fishermen. However, no fishing by nationalities other than Spanish has occurred in the post-war period.

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Conservation Measures

Conservation measures enforced by the Portuguese consist of a prohibition on the taking of sardines of less than eleven centimeters in length and the requirement that the mesh of sardine nets must not be finer than ten millimeters. The size limit of eleven centimeters has been in effect since 1926; the regulation of the size of nets is a very old one. The fishermen have no particular incentive to take small sardines since they are not utilizable for canning and cannot be transported to interior points for consumption.

To protect the national fishing industry, the Portuguese assert their jurisdiction in coastal waters for the purpose of fishing operations up to the six-mile limit. Foreign vessels are not permitted to fish within the six-mile limit, and this prohibition is enforced by the Ministry of Marine which maintains nine coastal patrol boats to apprehend violators. Violations are, at present, committed only by Spanish sardine boats. When apprehended they are brought into a Portuguese port and fined and their catches are confiscated, after which they are allowed to proceed. Violations appear to be quite common. For example, during the period October 1 to 16, 1948, seven Spanish boats were apprehended in the act of fishing within the prohibited area.

The prohibition on foreign fishing operations in Portuguese territorial waters is contained in Law No. 735 of July 10, 1917. The limit of such waters under this law for the purpose of fishing operations is determined in relation to foreign fishermen by reciprocity with the legislation in effect in their respective countries on the date of the promulgation of the Portuguese law. Under Spanish law, fishing operations by foreign vessels are prohibited within the six mile limit; thus the same limit is imposed on Spanish vessels by the Portuguese. On the other hand, Belgium allows foreign vessels to fish up to within three miles of its coast and Portugal, on a reciprocal basis, would allow Belgian fishermen to fish up to the same limit off the Portuguese coast.

Fishing Accord with Spain Not Contemplated

The Portuguese have no accord with Spain on the exploitation of the sardine fisheries of the two countries. The Spanish have large sardine fishing fleets based on Vigo in the north and Cadiz and Huelva in the south which would appear to offer strong competition with the Portuguese fishermen. However, since the most important fishing grounds are located within the six-mile limit and since these are barred to the Spanish under present regulations, there does not seem to be any feeling on the part of the Portuguese that this competition warrants their entering into an agreement with Spain on the exploitation of the offshore fisheries. No accord with Spain on this subject is being considered at present. Recently the Union of Fish Canning Manufacturers of Galicia, located at Vigo, addressed a petition to the Spanish Government requesting it to open negotiations with

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Portugal for an agreement which would permit Spanish sardine boats to fish up to within three miles of the Portuguese coast. This proposal created a violently unfavorable reaction in the Portuguese fishing industry and in the local press which vigorously opposed the Portuguese Government entering into any such negotiations.

Recurring Crises Resulting from Scarcity
of Fish and Need for Scientific Study of Fishery

The Portuguese sardine industry is currently passing through one of its periodic crises resulting from the failure of the fish to appear off the Portuguese coast. Sardine catches thus far during the 1948 fishing season (May through December) have been 50% below normal and the problems thereby created for the industry have been serious enough to warrant the Government taking action to extend financial assistance to the proprietors. The weight of evidence is that this scarcity, which is of a recurring nature, is the result of unfavorable natural conditions affecting the reproduction and early growth of the sardines. Even at the beginning of the 19th century when fishing operations were on a much smaller scale and extremely rudimentary in nature, periods of scarcity and abundance were noted. From the evidence at hand regarding the habits, reproduction, and life cycle of a sardine, which is admittedly scanty, Portuguese marine biologists are doubtful whether the intensity of fishing operations has any appreciable influence on the quantity of fish available. They feel that reproduction possibilities of the sardine are much greater than the ability of man to exhaust the supply. However, there is some inconclusive evidence that fishing operations do have an effect on the quantity of sardines in existence. Data on this subject is very scanty and exceedingly difficult to obtain. No thorough-going scientific studies have yet been made to determine the reasons for the cycles of abundance and scarcity which are such a notable characteristic of the sardine off the Portuguese coast. The current crisis in the industry has revived proposals that the Government should take steps for the realization of such studies which have long been advocated by the head of the official Marine Biology Station, Dr. Agalhaes Ramalho.

Sources: Guilherme de Sousa Ottero Calgado,
 Secretary-General of Guild of Sardine Fishing
 Proprietors.
 Commander Azevedo e Silva,
 Director of Fisheries, Ministry of Marine.
 Dr. Alirado Sobral Mendes de Agalhaes Ramalho
 Director of Government's Marine Biology Station
 Trade publications
 Official statistics
 Local press.

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